

STATE - LPA
PROFESSIONAL SERVICES, LPA STAFF
CONSTRUCTION ENGINEERING SERVICES

CITY OF LINCOLN
NEBRASKA DEPARTMENT OF ROADS
PROJECT NO. LCLC-5230(2)
CONTROL NO. 13140
LINCOLN DOWNTOWN STREET RESURFACING

THIS AGREEMENT, made and entered into by and between the City of Lincoln, Nebraska hereinafter referred to as the "LPA", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and collectively referred to as the "Parties"

WITNESSETH:

WHEREAS, LPA has completed or is in the process of completing plans, special provisions, and standard specifications for the letting and construction of a federal-aid transportation related construction project, and

WHEREAS, the LPA and State have entered into Program Agreement, BL1086, for the above named project executed by the LPA on November 23, 2010 and executed by the State on November 29, 2010, and

WHEREAS, the LPA's federal-aid project is designated as Project No. LCLC-5230(2) and

WHEREAS, a location map of the LPA's project depicted on EXHIBIT "A" is attached and hereby made a part of this agreement, and

WHEREAS, the project identified above is solely the responsibility of the LPA; the State's involvement in this project is for the sole purpose of acting as the representative of the Federal Highway Administration (FHWA) for eligibility of the project for federal funding;

WHEREAS, the LPA desires to use its own staff to perform the necessary professional construction engineering services for this project, and

WHEREAS, the LPA desires to be reimbursed for this work from Federal funds made available for this project, and

WHEREAS, the LPA staff is properly qualified to complete this work and has met all applicable requirements of the Nebraska Board of Engineers and Architects to provide professional services for this project, and

WHEREAS, LPA is willing to perform the services in accordance with the terms hereinafter provided, agrees to comply with all federal, state, and local laws and ordinances applicable to this agreement, and agrees to comply with all applicable federal-aid transportation

project related program requirements, so that LPA's project will be fully eligible for federal reimbursement, and

WHEREAS, the State is willing to reimburse LPA for its work under this Agreement with federal funds so long as the LPA meets all applicable federal and state federal-aid reimbursement laws and requirements, and

WHEREAS, the State has let or will let a construction contract for the project on behalf of the LPA, and

WHEREAS, the parties intend that the services also be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual, and

WHEREAS, the LPA is required to use the State provided construction recordkeeping system (Trans•Port Site Manager), for the Services provided under this agreement.

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

WHEREVER in this agreement the following terms are used, they shall have the following meaning:

"LPA" means the City of Lincoln, Nebraska and any employees thereof, whose business and mailing address is 901 W Bond Street, Suite 100, Lincoln, NE 68521, and

"LPA MANUAL" shall mean the Nebraska Department of Roads' LPA Guidelines Manual for Federal-Aid Projects. The LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address: <http://www.dor.state.ne.us/gov-aff/lpa/lpa-guidelines.pdf>, and

"RESPONSIBLE CHARGE" or "RC" shall mean LPA's representative for the project whose duties and responsibilities are identified in federal law and in the LPA Manual, and

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative. The State represents the interests of the United States Department of Transportation on federally funded transportation projects sponsored by a sub recipient of federal funds and any reference to the "State" in this Agreement shall mean the State on behalf of the United States Department of Transportation.

"FHWA" means the Federal Highway Administration, United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

"DOT" means the United States Department of Transportation, Washington, D.C. 20590,

acting through its authorized representatives.

"STATE REPRESENTATIVE" means an employee of the State assigned by the State to observe whether the LPA's project meets the eligibility requirements for federal funding and to provide technical assistance when requested by the LPA, in LPAs efforts to comply with the requirements for Federal-aid funded local projects.

"PHASE OF WORK" means the distinct work phases established for federal aid transportation projects and are the following;

1. Preliminary Engineering/NEPA (*PE*)
2. Final Design
3. Right-of-Way (*ROW*)
4. Utilities
5. Construction Engineering (*CE*)
6. Construction

Each new work phase requires FHWA to: 1) approve obligation of funds, 2) authorize work in that phase to begin, and 3) NDOR to issue a notice-to-proceed to the LPA.

To "ABANDON" the Agreement means that the State has determined that conditions or intentions as originally existed have changed and that the Agreement as contemplated herein is to be renounced and deserted for as long in the future as can be foreseen.

To "SUSPEND" the work means that the State has determined that progress is not sufficient, or that the conditions or intentions as originally existed have changed, or the work completed or submitted is unsatisfactory, and that the work as contemplated herein should be stopped on a temporary basis. This cessation will prevail until the State determines to abandon or terminate the work or to reinstate it under the conditions as defined in this agreement.

To "TERMINATE" or the "TERMINATION" of this agreement is the cessation or quitting of this agreement based upon action or failure of action on the part of the LPA as defined herein and as determined by the State.

SECTION 2. PROGRAM AGREEMENT

All provisions of the project program agreement remain in full force and effect, except to the extent specifically modified herein.

SECTION 3. SCOPE OF SERVICES

LPA understands that the Services provided by LPA must be completed in accordance with all federal-aid reimbursement requirements and conditions. LPA agrees that the Scope of Services for this work will be in two parts. Part one of the Scope of Services is contained within

the General Statement set out below. Part two of the Scope of Services is set out on the document attached hereto as Exhibit "B", entitled Scope of Services and Fee Proposal, which is hereby fully incorporated herein and made a part hereof by this reference. Exhibit "B" is the result of the following process:

- (1) LPA created a document describing the detailed proposed Scope of Services for this project.
- (2) LPA and State together reviewed the proposed Scope of Services and Fee Proposal document, which is attached as Exhibit "B".
- (3) On all construction projects, the LPA shall develop an Environmental Compliance Checklist to track and record oversight of the environmental commitments. The LPA shall develop a Project Commitment Checklist to track and record oversight of project specific commitments involving right of way, railroad, access, special provisions, etc. These checklists shall be developed by and maintained by the LPA.

State and LPA have agreed that Exhibit "B" sets out the Services reasonably necessary and the costs reasonably estimated for LPA Services to adequately observe, monitor, inspect, measure, manage, document and report so that LPA's project is constructed by the contractor in compliance with the Construction Contract Documents (definition below), the Manuals (definition below), State and Federal law, rule or regulation and policy. The LPA agrees to provide the services listed on Exhibit "B" for Project No. LCLC-5230(2) Control No. 13140, in Lancaster County, Nebraska.

General Statement: The LPA services generally include, but are not limited to, project management, construction engineering, pre-construction staking, traffic control plans, conducting the preconstruction conference, staking and inspection and materials sampling and testing during project construction, monitoring environmental commitments, preparing as-built plans, progress computations, final computations, preparing contractor change orders, and work orders, and the necessary communication to insure project eligibility.

The LPA shall review and have a working knowledge of the project plans, special provisions, standard specifications (the Standard Specifications for Highway Construction of NDOR (Current Edition), change orders and all other project related contract documents for the construction of LPA's Federal-Aid project. The project plans, special provisions, standard specifications, and other contract documents are hereby incorporated by reference into this agreement, as if they were fully set forth herein, and collectively, may be referred to as the

Construction Contract Documents. LPA shall have the duties of "Inspector", (also referred to in the NDOR Construction Manual as "Construction Technician"); "Project Manager," and also "Engineer" (unless the context of use of the term "Engineer" would otherwise require), as those terms are defined and duties set out in the Standard Specifications for Highway Construction (2007 Edition). LPA shall be responsible for all duties of the "Engineer".

Additionally, LPA shall review and have a working knowledge of the following authoritative guides and manuals related to highway construction, materials and federal aid reimbursement:

- (1) NDOR Construction Manual - Current Edition
- (2) Materials Sampling Guide
- (3) Standard Methods of Tests – 2006
- (4) The LPA Manual
- (5) The Manual on Uniform Traffic Control Devices

These documents are hereby incorporated herein by reference as if fully set forth, and these documents, collectively, may be referred to as the Manuals. Unless required otherwise by the Construction Contract Documents, LPA shall be responsible for timely completion of all applicable checklists, tests, samples, duties, requirements and provisions of the Manuals. The Manuals will be used to determine what, when, how, the sequence, and other details of the work that must be provided by LPA, whenever LPA's duties in these respects are not clearly set out in the Construction Contract Documents. LPA shall employ a sufficient number of qualified employees on the project to adequately observe, monitor, inspect, measure, manage, document, report and carry out the other duties of this agreement, so that the project is constructed by the contractor in compliance with the Construction Contract Documents, the Manuals, State and Federal law, rule or regulation and policy. LPA shall fulfill all contract duties of inspection, project management and construction engineering for the project in a timely manner and shall communicate regularly about the progress of the construction with the State, through the RC, and, when appropriate for federal funding or eligibility issues, the State representative.

The LPA shall be present at the project site when appropriate for each applicable phase of construction to inspect, observe, monitor, measure, manage, document and report on the progress of the work.

The parties understand that the LPA is not responsible for the Contractor's means and methods of construction. To the extent the Construction Contract Documents and the Manuals

specify sequencing of work, equipment requirements, or other construction methods, the LPA shall keep the Owner's RC informed about the progress and quality of the portion of the work and shall advise the RC about observed or measured deficiencies in the work.

SECTION 4. NEW EMPLOYEE WORK ELIGIBILITY STATUS (This version is for LPA provided professional services agreement only.)

The LPA agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska under this agreement. The LPA hereby agrees to contractually require any Consultants or Subconsultants to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

The undersigned duly authorized representative of the LPA, by signing this agreement, hereby attests to the truth of the following certifications, and agrees as follows:

Neb.Rev.Stat. § 4-114. I certify compliance with the provisions of Section 4-114 and, hereby certify that this Local Public Agency shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. I agree to require all Subconsultants, by contractual agreement, to require the same registration and verification process.

SECTION 5. NOTICE TO PROCEED AND COMPLETION

The State will issue the LPA a written Notice-to-Proceed (NTP) upon full execution of this agreement and upon verification that Federal funding approval has been obtained for the services under this agreement. Any work or services performed by LPA on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement. LPA agrees to prosecute this work promptly to completion.

State authorized changes in the scope of services, which increase or decrease work-hours or services required of the LPA, will provide the basis for changes to the total costs of the services under this agreement.

The LPA shall complete all work under this agreement within 45 calendar days after the date of final acceptance of the project construction by the LPA. Any costs incurred by LPA after the

completion deadline are not eligible for federal funding reimbursement unless the LPA has received an extension of time in writing from the State and the LPA has federal funding approval for the extension of time.

SECTION 6. CONFLICT OF INTEREST

The LPA shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for the project to remain fully eligible for State or Federal funding. LPA should review, understand and follow the instructions provided in the **NDOR CONFLICT OF INTEREST GUIDANCE**

DOCUMENT for LPA OFFICIALS, EMPLOYEES & AGENTS for LOCAL FEDERAL-AID TRANSPORTATION PROJECTS located on the State website at the following location:

<http://www.dor.state.ne.us/gov-aff/lpa/chapter-forms/coi/coi-guidance-doc-lpa.pdf>

In the event a consultant is used by the LPA on this project, the consultant must also complete and sign the **CONFLICT OF INTEREST DISCLOSURE FORM FOR CONSULTANTS for Local Federal-aid Transportation Projects**, for each project. This form is located on the State website at the following location:

<http://www.dor.state.ne.us/gov-aff/lpa/chapter-forms/coi/coi-disclosure-doc-consultant.pdf>

Consultants and sub-consultants providing services for LPA's, or submitting proposals for services, shall have the duty to notify the LPA and the NDOR LPD PC and submit a revised Conflict of Interest Disclosure Form for Consultants for any changes in circumstances, or discovery of any additional facts, that could result in someone employed by, or who has an ownership, personal, or other interest with Consultant or sub-consultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

SECTION 7. REIMBURSEMENT AND INVOICING

For performance of the services described in this agreement, the LPA will be reimbursed for direct costs and indirect costs as defined below in this section, that are allowable subject to the terms of this agreement and to all requirements and limitations of the State policies and the federal cost principles contained in 2 CFR 225 – Cost Principles for State, Local and Tribal Governments and the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$724,005.52, of which \$579,204.42 is the Federal share and \$144,801.10 is the LPA share.

- A. **Direct costs** must be incurred specifically for the services performed under this agreement, and include:

1. Direct Salaries and Wages costs – for time devoted and identified specifically for work under this agreement and based upon actual hours as documented by time reports that account for all hours compensated during the pay period and billed at actual labor rates. Time reports must include project description, project number, pertinent work phase, dates of service, and the individual's name and position (*as required by LPA Manual Chapter 13, paragraph. 13.4.7*).
2. Labor Fringe Benefits – provided they are:
 - a) reasonable,
 - b) required either by law, labor agreements or an established policy of the LPA,
 - c) are equitably allocated to all activities,
 - d) the accounting basis (cash or accrual) is consistently followed by the LPA,
 - e) are eligible in accordance with 2 CFR part 225 (OMB Circular A-87), and
 - f) the allocation rate has been reviewed and approved by NDOR and/or FHWA for the work under this agreement. Fringe benefit costs include:
 - Paid Leaves (holiday, vacation, sick, court, military, etc.)
 - Employer contributions or expenses for:
 - a. Social Security and Medicare
 - b. Employee life and life insurance
 - c. Unemployment insurance
 - d. Worker's compensation insurance
 - e. Retirement/Pension plan costs
 - f. Other similar benefits
3. Direct Non-labor costs – subject to limitations and restrictions described below and in the Program Agreement and provided that costs of this nature are not also included in an indirect cost rate and are necessary to fulfill the LPA's responsibilities under this agreement. Typical costs might include:
 - Vehicle use – mileage rates established below
 - Travel expenses – meals, lodging, etc. – subject to limitations set out below
 - Materials or items purchased or used specifically for a project
 - Rental or use of other machinery, equipment or engineering surveying instruments, etc.
 - Purchase of approved equipment or other capital expenditures necessary for the project

- Contracted services or expense items necessary to carry out the project
- Advertisements soliciting personnel, goods or services necessary to carry out the project

Direct non-salary costs must be adequately documented by invoices or usage reports, and in the case of payments to employees or suppliers and vendors, show evidence of proof-of-payment.

For purposes of standardizing this agreement, the following expenses will be reimbursed at actual costs, not to exceed the rates as shown below.

- (a) The reimbursement for vehicle mileage associated with the use of company owned vehicles shall be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. For vehicle mileage associated with the use of a privately owned vehicle (POV), reimbursement is limited to the lesser of:
 - 1) The mileage rate which the consultant reimbursed to the person who submitted the claim for POV use, or
 - 2) The prevailing standard rate as established by the IRS.
- (b) Automobile Rentals and Air Fare will be actual reasonable cost giving the State all discounts.
- (c) The reimbursement for meal and lodging rates shall be the prevailing standard rate as indicated in the current website address for U.S. General Services Administration's (GSA) rates which is indicated below:
<http://www.gsa.gov/portal/category/100120>
 - (1) For the Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast:

- (a) Employee is required to depart at or before 6:30 a.m., or
- (b) Employee is on overnight travel.

Lunch:

- (a) Employee must be on overnight travel. No reimbursement for same day travel.
- (b) Employee is required to leave for overnight travel at or before 11:00 a.m., or

- (c) Employee returns from overnight travel at or after 2:00 p.m.

Dinner:

- (a) Employee returns from overnight travel or work location at or after 7:00 p.m., or
- (b) Employee is on overnight travel.

Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.

The Consultant shall note the actual lodging and meal costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town. The total daily meal costs must not exceed the rate indicated in (c) above. When requested by LPA or State, the Consultant will provide a copy of the meal receipts.

B. **Indirect costs** are incurred for common purposes and provide a benefit to the entire organizational entity. These costs are recovered through an indirect cost rate applied as a percentage to direct labor. LPA's indirect costs will only be allowed if: 1) the LPA has an indirect cost allocation rate that is supported by an Indirect Cost Allocation Plan (ICAP) which has been developed in accordance with 2 CFR 225 – Cost Principles for State, Local and Tribal Governments [OMB Circular A-87], and 2) the indirect cost allocation rate has been approved in advance by NDOR. *(If the LPA has already in place an ICAP which has been reviewed and approved by the LPA's cognizant Federal agency, the ICAP will be considered for acceptance by FHWA and NDOR.)*

C. The LPA shall submit invoices to the State no more than once per month. The invoices must present actual direct and indirect costs, as described above, billed for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed.

Each monthly invoice must be substantiated by a progress report which is to include/address, as a minimum:

1. A description of the work completed for that period
2. A description of the work anticipated for the next pay period
3. Information needed from State

4. Percent of work completed to date
5. A completed "Cost Breakdown Form" which is located on the State's webpage at www.transportation.nebraska.gov/rfp.

If the LPA does not submit a monthly invoice, it shall submit its progress report monthly.

- D. The State will make every effort to pay the LPA within 30 days of receipt of the LPA's invoices. Payments are dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the State determines that the work submitted is satisfactory. Upon determination that the work was adequately substantiated and satisfactory, reimbursement will be made in the amount of 80 percent of the billed eligible actual costs. When an audit is performed by the State at the completion of the work, the actual allowable overhead rate for the year the project labor was incurred will be applied to the direct labor costs for that year. If a particular year's actual overhead has not yet been computed or approved by the State, the most recent year's accepted rate will be applied. The audit may result in additional funds due the LPA or a cost due from the LPA to the State. The LPA agrees to reimburse the State within 30 days for any overpayments discovered by the LPA or the State or its authorized representative.

The acceptance by the LPA of the final payment will constitute and operate as a release to the State for all claims and liability to the LPA, its representatives, and assigns, for any and all things done, furnished, or relating to the services rendered by or in connection with this agreement or any part thereof.

- E. The LPA shall maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of final cost settlement by FHWA under this agreement. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, the LPA shall furnish copies.

SECTION 6. GENERAL REQUIREMENTS:

- A. The LPA shall advise the State when it appears any Disadvantaged Business Enterprise (DBE) working on the project is in need of assistance.

- B. The LPA shall make every effort to assist the Contractor or any Subcontractor in interpreting Project Plans, Special Provisions, Standard Specifications, other Construction Contract Documents, or the Manuals.
- C. The LPA will be present at the project site or available at LPA's Offices beginning on the date specified in the LPA's notice to proceed to the contractor, unless project work has not begun at the site; or, with at least 24 hours notice, at any prior date (1) when contract work begins or when materials are delivered to the project that need to be tested, sampled or inspected to verify conformance to the requirements of the Construction Contract Documents.
- D. The LPA will review and approve the performance of all construction work on the project, with the right, but not the duty for the State and FHWA to review for compliance or funding eligibility.
- E. All reports of field tests performed by the LPA will be submitted weekly to the State Representative (two copies). LPA will take appropriate action to reject or remedy the work or materials that do not conform with the contract documents.
- F. The LPA shall comply with all Federal, State and local laws, rules or regulations, policies or procedures, and ordinances applicable to the work contemplated in this agreement.
- G. Project time delays attributed solely to the Contractor, will constitute a basis for a request for an equivalent extension of time for the LPA. The parties understand that federal reimbursement of extra compensation must be approved in advance as described in the Fees and Payments Section of this agreement.
- H. The sampling and testing type, method and frequency must be completed by LPA according to the current State of Nebraska Manuals, including the Materials Sampling Guide and the State Standard Methods of Tests (www.dor.state.ne.us), and the Construction Contract Documents. For sampling or testing issues or situations that are not covered in the Construction Contract Documents or the Manuals, LPA shall decide what testing type, method or frequency should be applied for this project. Any test methods or procedures that are proposed to be used and are not covered by NDOR procedures must receive prior concurrence for use from NDOR and FHWA.

SECTION 7. OWNERSHIP OF DOCUMENTS:

The diaries, reports, field books, shop drawings, surveys, plans, specifications, maps, computations, charts, and electronic project data and all other project documents prepared or obtained are the property of the LPA. At the conclusion of the project, the LPA shall include

these documents in the LPA's federal-aid project file. Further, LPAs time sheets and payroll documents shall be kept in LPAs files for at least three years after the project acceptance by FHWA.

SECTION 8. PROFESSIONAL PERFORMANCE

The LPA understands that it is solely responsible for the quality of the professional services it is providing for this project. LPA believes that LPA employees have the necessary professional training, experience and ability to properly complete the work under this agreement. Any examination by the State, or FHWA, or any acceptance or use of, or acquiescence in the LPA's work product, will not be considered to be a full and comprehensive examination and will not be considered approval of the LPA's work product which would relieve the LPA from liability or expense that would be connected with the LPA's sole responsibility for the propriety and integrity of the professional work to be accomplished by the LPA pursuant to this Agreement.

The LPA further understands that acceptance or approval of any of the work of the LPA by the State or of payment, partial or final, will not constitute a waiver of any rights of the State, or in any way relieve the LPA from any liability or expenses due to error, omission, or negligence of the LPA in its work. That further, if due to error, omission, or negligence of the LPA, the work product of the LPA is found to be in error or there are omissions therein revealed during or after the construction of the project and revision, reconsideration or reworking of the LPA's work product is necessary, the LPA shall make such revisions without expense to the State. The LPA shall respond to the notice of any errors, omissions or negligence within 24 hours and give immediate attention to necessary corrections. If the LPA discovers errors in its work, it shall notify the State of the errors within 24 hours. Failure of the LPA to notify the State will constitute a breach of this Agreement. The LPA's legal liability for any or all damages incurred by the State or by others caused by error, omission, or negligent acts of the LPA will be borne by the LPA without liability or expense to the State and will not be considered eligible for reimbursement with federal funds.

SECTION 9. SUSPEND, ABANDON OR TERMINATE

The FHWA, or the State on its behalf has the absolute right to suspend or abandon the project or to change the general scope of work at any time and such action on its part will in no event be deemed a breach of this Agreement. The State can suspend or terminate this agreement at any time. The State will give the LPA seven days written notice of such suspension or termination.

If the State abandons or subtracts from the work, or suspends or terminates the agreement as presently outlined, the LPA will be reimbursed in accordance with the provisions of 48 CFR 31, provided however, that in case of suspension, abandonment, or termination for breach of this agreement or for improper work, the State can suspend reimbursements, pending the LPA's compliance with the provisions of this agreement. In determining the percentage of work completed, the State will consider the work performed by the LPA prior to abandonment, suspension or termination to the total amount of work contemplated by this agreement.

SECTION 10. GENERAL COMPLIANCE WITH LAWS

The LPA hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

SECTION 11. DISPUTES

Any dispute concerning a question of fact in connection with the work not disposed of by this agreement will be referred for determination to the State or a duly authorized representative, whose decision in the matter will be final and conclusive on the parties to this agreement.

SECTION 12. HOLD HARMLESS PROVISION

The LPA agrees to save harmless the State from all claims and liability due to activities of the LPA or those of the LPA's agents or employees in the performance of work under this agreement.

SECTION 13. PROFESSIONAL REGISTRATION

When applicable, the LPA shall affix the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all documents, plans, and specifications prepared under this agreement as required by the Nebraska Engineers and Architects Regulations Act, Neb.Rev.Stat. 81-3401 et.seq.

SECTION 14. SUCCESSORS AND ASSIGNS

This agreement is binding on successors and assigns of either party.

SECTION 15. SUBLETTING, ASSIGNMENT, OR TRANSFER

Any subletting, assignment, or transfer of any professional services to be performed by the LPA is hereby prohibited unless prior written consent of the State is obtained.

SECTION 16. ALL ENCOMPASSED

This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

After being duly sworn on oath, I do hereby acknowledge the foregoing certification and state that I am authorized to sign this agreement for the firm.

EXECUTED by the LPA this ____ day of _____, 2011.

CITY OF LINCOLN
Chris Beutler

Mayor

STATE OF NEBRASKA)
)ss.
LANCASTER COUNTY)

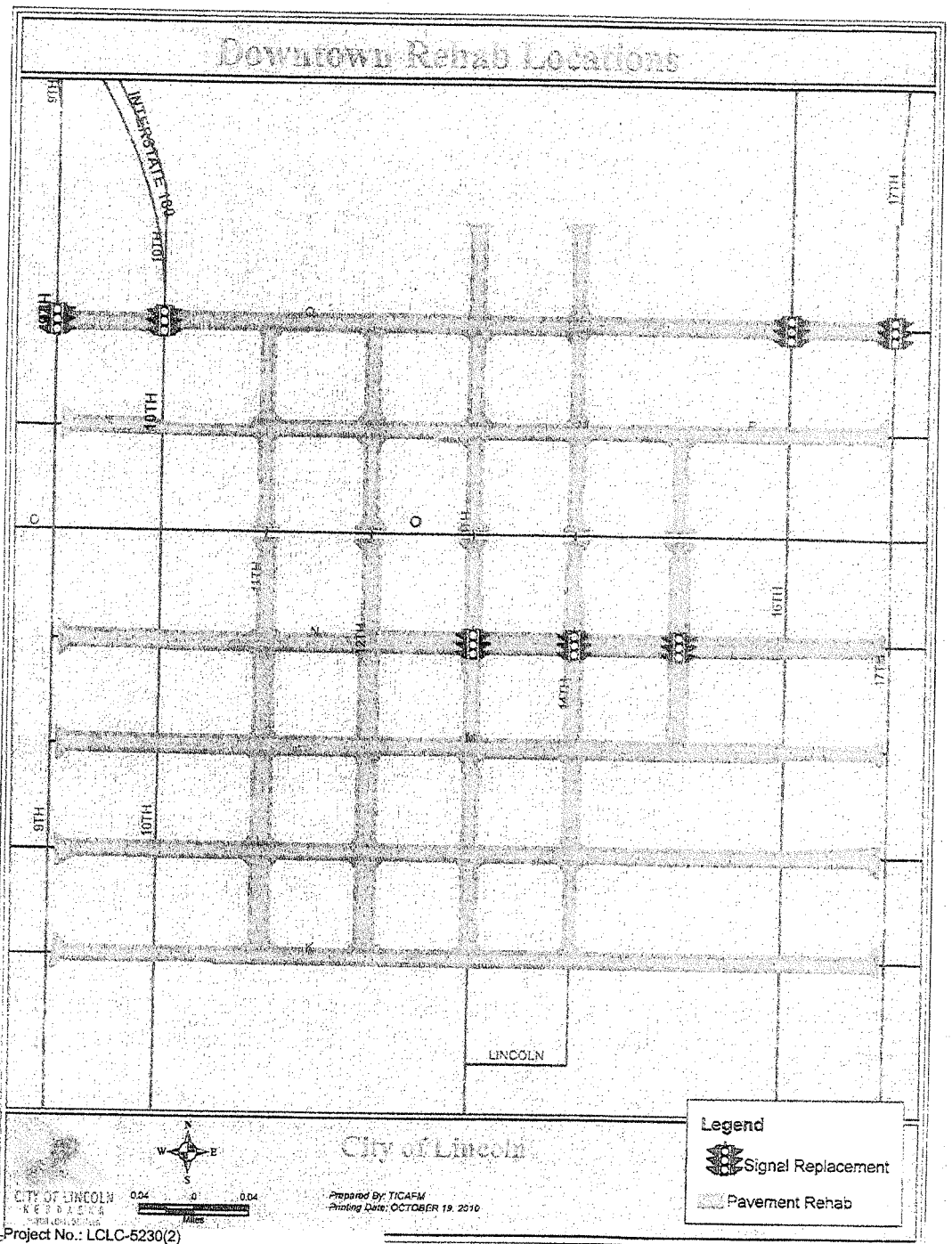
Subscribed and sworn to before me this ____ day of _____, 2011.

Notary Public

EXECUTED by the State this ____ day of _____, 2011.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Anthony Dirks

Local Projects Urban Engineer



Project No.: LCLC-5230(2)
 Control No.: 13140
 Project Name: Lincoln Downtown Street Resurfacing

Exhibit "A"
 Sheet 1 of 2

City of Lincoln Downtown Street Rehabilitation Localities													
#	Street	Location	Surface Type	Length Feet	Existing Width Feet	Proposed Width Feet	Row Width Feet	Section Township Range	National Functional Class	National Highway System	Current ADT	Projected 20-Year ADT	% of Trucks
1	11th St.	"K" Street to "Q" Street	Asphalt	2650	46 - 71	No Change	100 - 120	23.26 - 10 - 6	Urban Collector	No	5925	7450	0.05
2	12th St.	"K" Street to "Q" Street	Asphalt	2650	52 - 72	No Change	85 - 100	23.26 - 10 - 6	Urban Collector	No	5065	6370	0.05
3	13th St.	"K" Street to "R" Street	Asphalt	2650	51 - 71	No Change	100	23.26 - 10 - 6	Urban Collector	No	7860	8025	0.05
4	14th St.	"K" Street to "R" Street	Asphalt	2650	42 - 71	No Change	100	23.26 - 10 - 6	Urban Collector	No	5600	9500	0.05
5	15th St.	"M" Street to "P" Street	Asphalt	1170	51 - 71	No Change	120	24.25 - 10 - 6	Urban Collector	No	2150	2520	0.05
6	K St.	S. 9th St. to S. 17th St.	Asphalt	3200	49.5 - 52	53 - 56	100	23.26 - 10 - 6	Minor Arterial	No	14030	16740	1.50
7	L St.	S. 9th St. to S. 17th St.	Asphalt	3200	49.5 - 61	No Change	100	25.26 - 10 - 6	Minor Arterial	No	13070	14150	1.50
8	M St.	N. 9th St. to N. 17th St.	Asphalt	3180	37 - 61	No Change	100	25.26 - 10 - 6	Urban Collector	No	8430	10600	0.05
9	N St.	N. 9th St. to N. 17th St.	Asphalt	3180	61 - 71	No Change	100 - 102	25.26 - 10 - 6	Urban Collector	No	8075	10150	0.05
10	P St.	N. 9th St. to N. 17th St.	Asphalt	3180	51 - 71	No Change	90 - 100	23.24 - 10 - 6	Minor Arterial	No	12480	13120	1.50
11	Q St.	N. 9th St. to N. 17th St.	Asphalt	3180	51 - 71	No Change	90 - 100	23.24 - 10 - 6	Minor Arterial	No	12860	10716	1.50

Project No.: LCLC-5230(2)
Control No.: 13140
Project Name: Lincoln Downtown Street Resurfacing

I. Construction Engineering and Contract Administration for Lincoln Downtown Street Resurfacing, LCLC-5230(2); CN 13140; City of Lincoln Project # 540021

The City of Lincoln (City) to provide Project Management and Federal aid project Responsible Charge (RC) for the project through a Project Manager/RC, a Construction Project Manager (CPM) and Field Inspectors (FI) to complete construction inspection in the field and to oversee the construction contractor's work. These specific tasks to be performed by City personnel are described below.

1. **Meetings**
The City will be responsible for coordinating and conducting meetings related to the Downtown Construction Project including a pre-construction meeting, weekly progress/planning meetings with the contractor(s), and meetings with individuals and organizations affected by the Construction Project (i.e. FHWA, NDOR, adjacent property owners and tenants, Downtown Lincoln Association, the general public, etc...). The City will record the minutes and distribute to those attending the meeting and other representatives. Progress meetings will be attended by the RC, CPM, and FI.
2. **Public Notification**
The City will prepare notifications to residents and businesses on or adjacent to the Project to inform them of the project schedule and operations. These notifications will be provided by the use of door hangers or by delivery to the residence and/or business or by mailings. The FI will deliver flyers to adjacent owners, if required. The FI and CPM will keep in contact with adjacent tenants or owners throughout the project to inform them of the phasing schedule.
3. **Contractor Payments**
The generation of progress payments to the Contractor will be completed by the CPM using the Nebraska Department of Roads SiteManager. The FI will observe Contractor work at hand, measure in-place quantities, calculate the quantities of each item per day and document the calculation utilizing NDOR generated spreadsheets and plan sheets. The CPM will review the quantity calculations made by the FI and will generate pay applications using SiteManager. The CPM and the RC will review these pay applications and approve them after review and after any questions regarding the review are answered.
4. **Inspection (FI) / Construction Consultation (CPM & RC)**
The City will conduct continual field inspections during construction until it is completed in accordance with the contract documents and permits. The CPM will prepare Daily Diaries and FIs will prepare Inspector's Daily Reports (IDRs) in SiteManager. As mentioned in item 3, the FI will take measurements and make computations for in-place items. Inspection includes observing all items of work including, but not limited to, traffic control devices (including reflectivity checks), storm water best management practices, removals, water main construction, sanitary sewer construction, storm sewer construction, ADA curb ramp construction, traffic signals, paving, sod/seed, lighting, etc... the FI will verify the performance of the work is in conformance with the plans and specifications. City staff will also review the Traffic Control Plan (TCP) for the project for each phase and whenever adjustments are needed in the TCP. The TCP will also be submitted for NDOR and FHWA review. The FI will also be responsible for taking construction photos during construction of the project. The CPM and RC will also be visiting the work site to make sure work is progressing adequately.
5. **Construction Contract Change Orders and Work Change Directives**
The CPM will prepare Contract Change Orders (modifications) and Work Change Directives associated with the construction. Construction Contract Change Orders will be prepared using Nebraska Department of Roads SiteManager. The RC will review and approve all

Work Change Directives and Change Orders. Change Orders may be made for extension of time requests in addition to new quantity items.

6. Shop Drawing Submittal Processing

The RC will be responsible for maintaining a log of and distributing submitted Shop Drawings related to the project to the Design Consultant for the Design Consultant's review. The RC will prepare, when review is completed, the transmittal package (transmittal letter and marked-up Shop Drawings) for the RC to send to the Contractor.

7. Material and Products Source Processing

The CPM will be responsible for maintaining a log of material and product sources provided by the Contractor. The FI or the CPM will check that materials sources incorporated into the project shall be those approved by NDOR, and that all construction materials are on the latest version of the NDOR Approved Products List, unless approved by the Engineer.

8. Requests for Information

The RC will be responsible for maintaining a log of RFIs submitted. The RC will route the RFIs to the appropriate entity (City or Consultant) for their review and comment. The RC will prepare, when the RFI is answered, the transmittal package to send to the Contractor.

9. Construction Materials Testing

- a) The City will perform field tests for quality assurance related to the soils, asphalt, concrete, and aggregate materials. Sampling and testing will be at the frequencies specified in the current version of the Nebraska DOR Materials Sampling Guide or as directed by the RC. Testing will be in accordance with AASHTO and/or ASTM requirements. Concrete cylinder compression testing will be completed by the City of Lincoln Testing Lab (City Lab). Sampling, field testing, and fabrication of plastic concrete specimens will be performed by the City.
- b) Daily plastic concrete sampling will include performing air content, slump and temperature testing and fabricating, and delivery of concrete cylinders to the City lab for compression testing.
- c) The City will perform field density testing for compaction of the asphaltic concrete; deliver the asphalt production samples and Contractor-provided asphaltic concrete density cores to the City Lab for testing; and check pavement thickness by measuring contractor-provided cores.
- d) Soils testing and aggregate testing will include performance of compaction and moisture content determinations using nuclear moisture density testing apparatus or other approved methods. Laboratory testing of the soils will include but not be limited to performing moisture-density determinations, Atterberg soil classification, and mechanical analysis.
- e) Laboratory testing of the aggregate will include performing moisture-density determinations, relative density testing, sieve analysis and soundness testing.
- f) The City will be responsible for securing testing results and reports.

10. Documentation

The CPM and FIs will prepare and keep detailed notes, computations and measurements; records of quantities of pay items used in the work; and the tests, certifications, or basis of acceptance of these materials; and a daily record of the contractor's operations. The FI will collect and file all delivery tickets and material certifications. These include, but are not limited to, concrete tickets, asphalt tickets, crushed rock tickets, pipe certifications, rebar certifications, etc... The CPM will be responsible for making sure the SWPPP is updated as required by the Contractor.

11. Davis-Bacon Wage Interviews

The FI will conduct wage rate interviews with contractor and subcontractor personnel for Davis-Bacon compliance. The CPM will review the interview reports to determine if the wages are within compliance.

November 30, 2011

12. Utility Coordination

The City will help the Contractor to coordinate with all utility companies that are involved with the project to identify any conflicts that could result in delays to the Contractor's schedule as the project progresses. This primary responsibility is with the Contractor.

13. General Project Management

The CPM and the RC will be responsible for general coordination activities including coordinating RFI's to the consultants, miscellaneous daily or weekly coordination with NDOR, general document control or verification of the FI paperwork as needed for the project, communicating with the Contractor regarding work progress and schedule, coordinating with NDOR and FHWA as needed, etc.

14. As-Constructed Drawings

As-Constructed Drawings are completed in accordance with the "NDOR As-built Drawing Procedures". The process, in general, includes reviewing the Construction As-built Field Data and incorporating it into a black-lined set of plans of the project including changes to the project improvements. The CPM will coordinate with the Construction Contractor for additional information or clarifications needed. The completed and reviewed As-Built Field Data is then submitted to NDOR.

15. Project Closeout/Final Inspection

A walk-through will be made at the end of the project to develop a punch list of items the Contractor will need to repair if the item does not meet requirements of the plans, specifications, or special provisions. The RC, CPM, and FI will attend this walk-through with representatives from NDOR and FHWA.

The FIs will field measure applicable items of work and prepare final summaries for applicable items of work. The RC will review the project records prior to the submission of a final pay estimate for the Project. The RC and the CPM will review the final records and prepare the appropriate Project Closeout documentation in accordance with the "NDOR Project Closeout Procedures".

ROSE AC
PROJECT NAME - Lincoln Downtown Street Reimaging
PROJECT NO. LCIC-5202/2 CN 13140
MONITOR AND FEE ESTIMATE
CONSTRUCTION ENGINEERING INSPECTION

Task	Task Description	ES	MP	CPH	PE 1	PE 2	EI	CAO Tech	Drafter	Construction	Plant Test	Inten	Chief	Survey	Survey	Survey	RC	IPC	Subtotal	Total
1	SOURCE CE																			
2	Meeting	17	397	0	0	0	0	0	0	34	34	0	68						340	340
3	Project Review and preparation	2	42	0	0	0	0	0	0										84	84
4	Site Visit	20	20	0	0	0	0	0	0										40	40
5	Site Visit	10	75	84	0	0	0	0	0										20	20
6	Construction Survey Staking	5	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	Stop Drawing Review	40	170	0	0	0	0	0	0	1583.5	1495	1495	0	0	0	0	0	0	40	40
8	Construction Construction	5	10	0	0	0	0	0	0										20	20
9	Construction Construction	170	170	0	0	0	0	0	0										340	340
10	Site Manager and Working Day Report	5	20	0	0	0	0	0	0	65	65	450	0	0	0	0	0	0	0	0
11	Pay Estimates	5	40	0	0	0	0	0	0	60	60	0	0	0	0	0	0	0	120	120
12	Perform Material Sampling and Testing	5	20	0	0	0	0	0	0	40	40	0	0	0	0	0	0	0	80	80
13	Project Closeout	5	40	0	0	0	0	0	0	40	40	0	0	0	0	0	0	0	80	80
14	Final Inspection/Finals	5	40	0	0	0	0	0	0	40	40	0	0	0	0	0	0	0	80	80
15	Final Inspection/Finals	5	40	0	0	0	0	0	0	40	40	0	0	0	0	0	0	0	80	80
	Total time	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6824.5	7875.5

*Subtotal does not include CPH hours.
These are included in the "Total".

DIRECT LABOR COST SUMMARY

Category	ES MP	CPH	PE 1	PE 2	EI	CAO Tech	Drafter	Construction	Plant Test	Inten	Chief	Survey	Survey	Survey	RC	IPC	Subtotal	Total
ES MP - Engineering Services Manager																		
CPM - Construction Project Manager																		
PE 1 - Professional Engineer																		
PE 2 - Professional Engineer																		
CAO - Chief Architect/Officer																		
Inten - Inspector 1 (ACI/DOR Certified) Field Construction																		
Inten - Inspector 2 (ACI/DOR Certified) Field Electrical																		
Inten - Inspector 3 (ACI/DOR Certified) Field Mechanical																		
Inten - Inspector 4																		
C - Chief																		
Survey Crew Chief																		
Survey Crew 2																		
RC Responsible Charge																		
TOTAL DIRECT LABOR																		

OVERHEAD

TOTAL LABOR AND OVERHEAD																		
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DIRECT PROJECT EXPENSES

Mileage	0 mi.	\$0.50/mi.																
Survey Vehicle	0 mi.	\$0.50/mi.																
Construction Staking Materials	0 mi.	\$0.50/mi.																
Photocopiers	0 mi.	\$0.50/mi.																
Equipment Rental	0 mi.	\$0.50/mi.																
Printing 24 x 36 Sheets (Reproducible Paper)	0 mi.	\$0.50/mi.																
Outside Audit	0 mi.	\$0.50/mi.																
TOTAL DIRECT PROJECT EXPENSES																		

SUBCONSULTANTS

Testing Lab																		
Specialty Subcontractor																		
TOTAL LABOR AND OVERHEAD																		
RISKED FEE PERCENT																		
MONITOR AND FEE ESTIMATE																		
SUBCONSULTANTS																		
TOTAL FEE																		

EXHIBIT "C"

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICE PROVIDERS LPA PROJECTS

Consultant agrees to:

- (1) Make a detailed review of its existing insurance coverage,
- (2) Compare that coverage to the expected scope of the work under this contract,
- (3) Obtain the insurance coverage that it deems necessary to fully protect Consultant from loss associated with the work. Also, Consultant shall have at a minimum the insurance described below:

General Liability –

Limits of at least:

\$ 1,000,000 Per Occurrence

\$ 2,000,000 General Aggregate

\$ 2,000,000 Completed Operations Aggregate (if applicable)

\$ 1,000,000 Personal/Advertising Injury

- Consultant shall be responsible for the payment of any deductibles.
- Coverage shall be provided by a standard form Commercial General Liability Policy covering bodily injury, property damage including loss of use, and personal injury.
- General Aggregate to apply on a Per Project Basis.
- The LPA shall be named as Additional Insured on a primary and non-contributory basis including completed operations (the completed work/product) for three (3) years after the work/product is complete.
- Consultant agrees to waive its rights of recovery against the LPA. Waiver of Subrogation in favor of the LPA shall be added to, or included in, the policy.
- Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.
- If work is being done near a railroad track, the 50' railroad right of way exclusion must be deleted.
- In the event that this contract provides for consultant to construct, reconstruct or produce a completed product, products and completed operations coverage in the amount provided above shall be maintained for the duration of the work, and shall be further maintained for a minimum period of five years after final acceptance and payment.

- Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations (as per standard CG0001 Pollution Exclusion or equivalent). (If the standard pollution exclusion as provided by CG0001 has been amended, please refer to the following section entitled "Pollution Coverage.")
- **Pollution Coverage –**
- In the event that the standard pollution exclusion as provided by CG0001 has been amended, coverage may be substituted with a separate Pollution Liability policy or a Professional Liability policy that includes pollution coverage in the amount of \$1.0 million per occurrence or claim and \$1.0 million aggregate. If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of the Consultant.

Automobile Liability –

Limits of at least: \$ 1,000,000 CSL Per Accident

- Coverage shall apply to all Owned, Hired, and Non-Owned Autos.

Workers' Compensation –

Limits: Statutory coverage for the State where the project is located.

Employer's Liability limits: \$100,000 Each Accident

\$100,000 Disease – Per Person

\$500,000 Disease – Policy Limit

- Consultant agrees to waive its rights of recovery against the LPA. Waiver of Subrogation in favor of the LPA shall be added to, or included in, the policy

Professional Liability –

Limits of at least: \$ 1,000,000 Per Claim and Annual Aggregate

- Coverage shall be provided for three years after work/project completion.

Electronic Data and Valuable Papers –

Limits of at least: \$100,000 Electronic Data Processing Data and Media

\$25,000 Valuable Papers

Umbrella/Excess –

Limits of at least: \$1,000,000 Per Occurrence and Annual Aggregate

- Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.
- The LPA, shall be an "Additional Insured".
- Consultant agrees to waive its rights of recovery against the LPA. Waiver of subrogation

in favor of the LPA shall be provided.

Additional Requirements –

- Any insurance policy shall be written by a reputable insurance company acceptable to the LPA or with a current Best's Insurance Guide Rating of A – and Class VII or better, and authorized to do business in Nebraska.
- Evidence of such insurance coverage in effect shall be provided to the LPA in the form of an Accord certificate of insurance executed by a licensed representative of the participating insurer(s).
- For so long as insurance coverage is required under this agreement, the Consultant shall have a duty to notify the LPA and the State of Nebraska Department of Roads (State) when the Consultant knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be canceled or terminated. The Consultant must forward any pertinent notice of cancelation or termination to the LPA and to the State by mail (return receipt requested), hand-delivery or facsimile transmission within 2 business days of receipt by Consultant of any such notice from an insurance carrier. Copies of notices received by the Consultant shall be sent to the LPA, in care of the LPA's Responsible Charge and to the State at the following address:

Nebraska Department of Roads
Construction Division – Insurance Section
1500 Highway 2, P. O. Box 94759
Lincoln, NE 68509-4759
Facsimile No. 402-479-4854
- Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this agreement.
- The Limits of Coverage's set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the consultant or any of its subconsultants/tier subconsultants. The carrying of insurance described shall in no way be interpreted as relieving the consultant, subconsultant, or tier subconsultant of any responsibility of liability under the contract.
- If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement shall prevail.

PRIMARY TEAM MEMBERS
EXHIBIT "D"

City of Lincoln, Nebraska

<u>EMPLOYEE CLASSIFICATION</u>	<u>EMPLOYEE NAME</u>
Engineering Services Manager	Thomas Shafer
Construction Project Manager	Mark Miller
Professional Engineer 1	Erin Sokolik
Inspector 1	Zach Becker
Inspector 2	Nick Castillo
Inspector 3	Various City Materials Testing Lab Staff
Inspector 4	TBD (Intern or Paraprofessional)
Clerical	Various City Clerical Staff
Responsible Charge/Professional Engineer	Erika Nunes